

DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
FRANCESCA GESSNER, State Bar #247553
TARA M. STEELEY, State Bar #231775
Deputy City Attorneys
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, California 94102-4682
Telephone: (415) 554-4762
Facsimile: (415) 554-4699
E-Mail: francesca.gessner@sfgov.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CALIFORNIA RESTAURANT ASSOCIATION.

Plaintiff,

VS.

THE CITY AND COUNTY OF SAN
FRANCISCO AND THE SAN
FRANCISCO DEPARTMENT OF
PUBLIC HEALTH,

Defendants.

Case No. C08-3247 CW

**DEFENDANT CITY AND COUNTY OF
SAN FRANCISCO'S STATEMENT OF
NON-OPPOSITION TO SANTA
CLARA COUNTY'S
ADMINISTRATIVE MOTION TO
RELATE CASES**

The Honorable Claudia Wilken

1 Defendant the City and County of San Francisco ("San Francisco") respectfully submits this
2 statement of non-opposition to the Administrative Motion to Consider Whether Cases Should Be
3 Related filed by the County of Santa Clara and the Santa Clara County Public Health Department
4 ("Santa Clara"). Santa Clara's motion seeks a determination that the above-captioned case is related
5 to *California Restaurant Association v. The County of Santa Clara et al.*, Case no. 08-CV-03685 RS
6 (reassignment pending) ("Santa Clara case"). San Francisco agrees with Santa Clara that the two
7 cases are related under Local Civil Rule 3-12. The motion is unopposed and should be granted.

8 In its Statement of Non-Opposition to Defendant's Administrative Motion, the California
9 Restaurant Association ("CRA") improperly asks this Court to order an expedited briefing schedule in
10 the Santa Clara case. CRA's request for an expedited briefing schedule contained within their
11 Statement of Non-Opposition does not comply with Civil Local Rule 6-1 through 6-3. Further,
12 CRA's request is premature and unnecessary for the reasons set forth in Santa Clara's Opposition to
13 CRA's Administrative Motion For An Order Setting Expedited Hearing and Briefing Schedule and
14 the related declarations, attached hereto as Exhibit 1.

15
16 Dated: August 8, 2008

17 DENNIS J. HERRERA
18 City Attorney
19 WAYNE SNODGRASS
20 FRANCESCA GEESNER
21 TARA M. STEELEY
22 Deputy City Attorneys

23 By: _____ /s/
24 FRANCESCA GEESNER

25 Attorneys for Defendant
26 CITY AND COUNTY OF SAN FRANCISCO
27
28

EXHIBIT 1

1 ANN MILLER RAVEL, County Counsel (S.B. #62139)
2 MIGUEL MARQUEZ, Assistant County Counsel (S.B. #184621)
3 TAMARA LANGE, Lead Deputy County Counsel (S.B. #177949)
4 OFFICE OF THE COUNTY COUNSEL
5 70 West Hedding Street, East Wing, Ninth Floor
6 San Jose, California 95110-1770
7 Telephone: (408) 299-5900
8 Facsimile: (408) 292-7240

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10 Attorneys for Defendants
11 COUNTY OF SANTA CLARA and SANTA
12 CLARA COUNTY PUBLIC HEALTH
13 DEPARTMENT

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CALIFORNIA RESTAURANT) No. C 08-03685 JF
19 ASSOCIATION,)
20 Plaintiff,) DEFENDANTS' OPPOSITION TO
21 v.) PLAINTIFF'S ADMINISTRATIVE
22 THE COUNTY OF SANTA CLARA) MOTION FOR AN ORDER SETTING
23 and THE SANTA CLARA COUNTY) EXPEDITED HEARING AND BRIEFING
24 PUBLIC HEALTH DEPARTMENT,) SCHEDULE ON MOTION FOR
25 Defendants.) DECLARATORY RELIEF AND A
26) PRELIMINARY INJUNCTION AND
27) REQUIRING FILING OF STATE COURT
28) MOTION PAPERS
Complaint filed: July 22, 2008
Notice of Removal filed: August 1, 2008
The Honorable Jeremy Fogel

29 The California Restaurant Association (CRA) seeks an expedited hearing schedule on its
30 motion for a preliminary injunction barring enforcement of Defendants' menu labeling
31 ordinance (Ordinance). CRA's administrative motion for an expedited briefing schedule should
32 be denied for two reasons. First, a motion to relate this case to CRA's nearly-identical action
33 challenging San Francisco's menu labeling ordinance is pending before Judge Wilken in the
34 Oakland Division. Denying CRA's administrative motion will allow CRA's challenges to the
35 Santa Clara County and San Francisco ordinances to be heard and decided together on a

1 schedule established by Judge Wilken. Second, CRA has requested an unreasonable briefing
2 schedule that would require Defendants' opposition to be filed today and that is predicated on
3 erroneous assertions that Defendants had agreed upon an expedited briefing schedule in state
4 court and that Defendants have "refused" to delay enforcement of the Ordinance.

5 CRA's motion to require Defendants to file of the remainder of CRA's state court
6 motion papers should be denied as moot because, although CRA has never asked Defendants to
7 file the voluminous state court record, Defendants will agree to do so.

8 **A. PLAINTIFF'S FORUM SHOPPING IS PREVENTING EFFECTIVE
9 SCHEDULING AND CONSIDERATION OF ITS MOTION**

10 Defendants Santa Clara County and the Santa Clara County Public Health Department
11 removed this action to federal court on August 1, 2008, six business days after CRA filed its
12 preliminary injunction motion in state court. As required by 28 U.S.C. § 1441, Defendants
13 removed "to the . . . division embracing the place where such action is pending[.]". On the
14 following business day, Defendants sought CRA's stipulation to relate this action to *California*
15 *Restaurant Association v. The City and County of San Francisco and The San Francisco*
16 *Department of Public Health*, Case No. CV-08-3247 CW, now pending before Judge Wilken.
17 Although CRA has now filed a non-opposition to Defendants' motion to relate the two cases,
18 Declaration of Tamara Lange (Lange Decl.) at ¶ 7, Exh. C, CRA originally refused to stipulate
19 to relation of the cases. Declaration of Sarah Esmaili at ¶ 5. By requiring Defendants to go
20 through the process of removing this case to federal court and then refusing to stipulate to
21 relation to CRA's parallel case in the Oakland Division, CRA has forced Defendants to expend
22 valuable time on several procedural motions.

23 Although CRA's motion suggests otherwise, Defendants never "agreed" to file their
24 opposition in state court on August 4th, a mere 11 days after accepting service of the preliminary
25 injunction motion. Sprinkles Decl. at ¶¶ 2-6. Had Defendants elected to proceed in state court,
26 they could and would have requested additional time to file an opposition to the preliminary
27 injunction motion. Such an application made little sense, however, once Santa Clara decided to
28 remove the case. It was particularly inappropriate to file such a request when the Santa Clara

1 Superior Court had not even determined at the time of removal whether the case would remain
2 on the Complex Civil Calendar.

3 CRA purports to need an expedited briefing schedule because Defendants "have refused
4 to stay the September 1, 2008 effective date of the Ordinance." Plaintiff's Administrative
5 Motion at 2. This is inaccurate. Actually, the press of time CRA now feels is a direct result of
6 its own forum-shopping tactics. After testifying against the Ordinance on June 3, 2008, at the
7 same hearing at which the Santa Clara County Board of Supervisors first voted 5-0 to adopt the
8 Ordinance, Declaration of Jennifer Sprinkles (Sprinkles Decl.) at ¶ 7, CRA delayed filing this
9 lawsuit for over seven weeks – and then filed in state court just five weeks before the Ordinance
10 is scheduled to take effect.¹

11 CRA now wants Defendants either to agree to a briefing schedule that would prejudice
12 their defense or to delay enforcement of the Ordinance. CRA and its counterpart, the New York
13 State Restaurant Association (NYSRA) have used the same tactics in the other two menu
14 labeling cases now pending in federal courts. Their strategy involves trying to force the few
15 public entities that have adopted menu labeling ordinances either to delay the effective dates of
16 their new laws pending resolution of their preliminary injunction motions or to file opposition
17 papers on a schedule more typical of proceedings on an application for a temporary restraining
18 order. For example, although New York City's menu labeling regulation, Health Code § 81.50,
19 was enacted on December 5, 2006 and was the subject of substantial local and national press,
20 NYSRA waited over six months, until June 15, 2007, to challenge the law, which was scheduled
21 to take effect on July 1, 2007.²

22 Similarly, San Francisco's menu labeling ordinance, Ordinance 40-08, was signed into
23 law on March 24, 2008. Although CRA testified at legislative hearings before San Francisco's
24 ordinance was adopted, CRA waited over three months, until July 3rd, to challenge the law,
25

26 ¹ At the required second reading of the Ordinance on June 24, 2008, the Board again voted 5-0
27 in favor of requiring menu labeling by chain restaurants.

28 ²See Summary of New York City litigation at: http://www.nyc.gov/html/doh/html/cdp/cdp_pan-calorieupdate.shtml.

1 which was scheduled to take effect on September 20th. Sprinkles Decl., ¶ 7. CRA then sought a
2 delay in the effective date as a condition of its agreement to provide San Francisco with
3 additional time to oppose the motion for preliminary injunction. Lange Decl., ¶ 2-3.

4 Imposing the sort of abbreviated schedule Plaintiff has requested would hamstring the
5 Defendants. As Defendants have explained, Santa Clara County Public Health Director Martin
6 Fenstersheib, M.D. is out of the office until August 11, 2008 and will not be available until his
7 return to provide the substantive factual and medical information essential to his expert
8 declaration in support of Defendants' opposition to CRA's motion for a preliminary injunction.
9 Lange Decl., ¶ 4. Given the number and complexity of the claims at issue on the preliminary
10 injunction motion, and the unavailability of the County's Public Health Director, Defendants
11 need time to complete effective opposition papers. Defendants respectfully submit that the
12 briefing and hearing schedule for CRA's motion should be set by Judge Wilken, as it would
13 have been had CRA not sought to avoid coordinated consideration of the San Francisco and
14 Santa Clara County menu labeling ordinances.

15 **B. DEFENDANTS WILL AGREE TO RE-FILE IN THIS COURT THE**
16 **REMAINDER OF CRA'S SUPPORTING PAPERS ORIGINALLY FILED IN**
STATE COURT

17 In their removal papers, Defendants included CRA's preliminary injunction motion and
18 memorandum of points and authorities and requested pursuant to 28 U.S.C. § 1447(b) that the
19 Court issue a writ to obtain the complete file from the state court. CRA has never informed
20 Defendants that they objected to that request, nor has CRA asked Defendants to re-file in the
21 federal proceeding CRA's supporting papers in the state court action. Having determined that it
22 is possible for Defendants to re-file here the voluminous supporting papers CRA e-filed in state
23 court (rather than going through the laborious process of scanning them first), Defendants will
24 agree to file the remaining papers and to withdraw their request pursuant to 28 U.S.C. §

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1 1447(b). CRA's administrative motion to require Defendants to file CRA's papers should
2 therefore be denied as moot.

3 Dated: August 8 2008

Respectfully submitted,

4 ANN MILLER RAVEL
County Counsel

5 By:

/S/
6 TAMARA LANGE
Lead Deputy County Counsel

7 Attorneys for Defendants
8 COUNTY OF SANTA CLARA and
9 SANTA CLARA COUNTY PUBLIC
HEALTH DEPARTMENT

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21 SAN JOSE DIVISION

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33 and THE SANTA CLARA COUNTY)
34 PUBLIC HEALTH DEPARTMENT,)
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20 I, JENNIFER SPRINKLES, do declare that:

21 I have personal knowledge of all of the matters stated herein and could testify truthfully
22 thereto if called to testify.

23 1. I am a Deputy County Counsel with the Office of the County Counsel for the County
24 of Santa Clara and am licensed to practice in all the courts of the State of California.

25 2. On July 22, 2008, Plaintiff filed a Complaint in the Superior Court of the County of
26 Santa Clara. On July 23, I appeared in the Superior Court before the Honorable Judge Joseph
27 Huber on behalf of the County for purposes of an *ex parte* hearing regarding Plaintiff's
28 application for an order permitting Plaintiff to exceed the Superior Court's 15 page limit for a
Declaration of Jennifer Sprinkles in
Support of Opposition to Administrative
Motion for Expedited Briefing

1 memorandum in support of a preliminary injunction. Judge Huber denied the request to file a
 2 37 page memorandum, but granted an extension permitting a 30 page limit.

3 3. Judge Huber instructed counsel to meet with Rowena Walker, Clerk of the Complex
 4 Civil Department to file documents and to discuss the Complex Civil Calendar. The Clerk
 5 indicated that Judge Huber would issue a decision about whether the matter would be on the
 6 Complex Civil Calendar and that, based on that determination, the matter would be scheduled
 7 for hearing. The Clerk informed us that if the Court sent the matter back to the regular civil
 8 calendar, the hearing date would be set by another judge and that if the case remained on the
 9 Complex Civil Calendar the matter could be heard on Judge Huber's regular law and motion
 10 day (i.e., on a Friday), but no earlier than August 15, 2008.

11 4. I asked the Clerk whether the parties could stipulate to a briefing schedule and hearing
 12 date, and the Clerk indicated that a stipulation would be appropriate. I did not agree, either on
 13 July 23, 2008 or at any other time, to a stipulated hearing date and briefing schedule. In fact, to
 14 my knowledge, no hearing date was selected on July 23.

15 5. Ms. Esmaili also asked on July 23, 2008 about the possibility of delaying the effective
 16 date of the Ordinance. I told her that I did not know what view our client, the Santa Clara
 17 County Board of Supervisors, would have regarding a request to delay the effective date of the
 18 Ordinance. I also told Ms. Esmaili that the Board was not in session and that I was unsure what
 19 the timing would be for going to the Board to pose that question.

20 6. I called Ms. Esmaili the following week, on July 30, 2008, and told her that we had no
 21 additional information because our County Counsel was away and the Board of Supervisors was
 22 not scheduled to hold its next public hearing until August 12, 2008.

23 7. I was present at the June 3, 2008 meeting of the Santa Clara County Board of
 24 Supervisors for the first vote on the County's menu labeling ordinance. Amalia B. Chamorro,
 25 Director of Local Government Affairs for the California Restaurant Association, was present
 26 and testified against the ordinance. At that meeting, the Board voted 5-0 in favor of adoption.
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1 The second reading and final vote to approve the menu labeling ordinance was June 24th, which
2 was also the last scheduled Board meeting until August 12th.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Jose, California on August 8, 2008.

JENNIFER SPRINKLES

138715.wpd

1 ANN MILLER RAVEL, County Counsel (S.B. #62139)
 2 MIGUEL MARQUEZ, Assistant County Counsel (S.B. #184621)
 3 TAMARA LANGE, Lead Deputy County Counsel (S.B. #177949)
 OFFICE OF THE COUNTY COUNSEL
 70 West Hedding Street, East Wing, Ninth Floor
 San Jose, California 95110-1770
 Telephone: (408) 299-5900
 Facsimile: (408) 292-7240

6 Attorneys for Defendants
 7 COUNTY OF SANTA CLARA and SANTA
 CLARA COUNTY PUBLIC HEALTH
 DEPARTMENT

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN JOSE DIVISION

13 CALIFORNIA RESTAURANT	)	No. C 08-03685 JF.
ASSOCIATION,	)	DECLARATION OF TAMARA LANGE IN
14 Plaintiff,	)	SUPPORT OF OPPOSITION TO
15 v.	)	ADMINISTRATIVE MOTION FOR
16 THE COUNTY OF SANTA CLARA	)	EXPEDITED BRIEFING
and THE SANTA CLARA COUNTY	)	Complaint filed: July 22, 2008
PUBLIC HEALTH DEPARTMENT,	)	Notice of Removal filed: August 1, 2008
18 Defendants.	)	The Honorable Jeremy Fogel

20 I, TAMARA LANGE, do declare that:

21 I have personal knowledge of all of the matters stated herein and could testify truthfully
 22 thereto if called to testify.

- 23 1. I am a Lead Deputy County Counsel with the Office of the County Counsel for the
 24 County of Santa Clara and am licensed to practice in all the courts of the State of California.
- 25 2. On August 4, 2008, I spoke with Sarah Esmaili of Arnold & Porter LLP, counsel for
 26 Plaintiff California Restaurant Association (CRA). I asked whether CRA would stipulate to a
 27 proposed order relating the cases. Ms. Esmaili asked in that conversation whether the County of
 28 Santa Clara would agree to delay the September 1, 2008 effective date of Santa Clara County

Declaration of Tamara Lange in
 Support of Opposition to Administrative
 Motion for Expedited Briefing

1 Ordinance No. NS-300.793 (the Ordinance). I explained that only the Board of Supervisors
 2 (Board) can delay the effective date of duly-enacted local laws, including the Ordinance, and
 3 that the Board was not scheduled to meet again until August 11- 12, 2008.

4 3. In a further conversation on August 5, 2008, Ms. Esmaili informed me that CRA
 5 would be unable to stipulate to relation of the two cases because doing so would create a 10-day
 6 period for decision on the motion to relate, which could in turn delay CRA's ability to obtain a
 7 Court order setting an expedited briefing schedule on their motion for a preliminary injunction.
 8 Ms. Esmaili reiterated that CRA would require that Defendants agree to a delay in the effective
 9 date as a condition of its agreement to provide San Francisco with additional time to oppose the
 10 motion for preliminary injunction.

11 4. In that same conversation on August 5, 2008, I explained to Ms. Esmaili that, given
 12 the voluminous material submitted in support of their motion and the very recent filing of the
 13 litigation, to prepare effectively to file opposition papers, I would need substantially more time
 14 than the three days CRA proposed in their briefing schedule. I further explained that Public
 15 Health Director Martin Fenstersheib, M.D. is out of the office until August 11, 2008 and will
 16 not be available to provide the substantive factual and medical information essential to his
 17 expert declaration in support of Defendants' opposition to CRA's motion for a preliminary
 18 injunction.

19 5. Attached hereto as Exhibit A is the Santa Clara County Board of Supervisors Closed
 20 Session Agenda for August 11, 2008.

21 6. Attached hereto as Exhibit B is the Stipulation and Order Regarding Page Limits
 22 And Briefing Schedule Regarding Plaintiff's Motion for Declaratory Relief and a Preliminary
 23 Injunction, and a Stay of Enforcement filed in Case No. C-08-3247 CW.

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1 7. Attached hereto as Exhibit C is Plaintiff's Statement of Non-Opposition to
2 Defendants' Administrative Motion to Consider Whether Cases Should Be Related, filed in
3 Case No. C-08-3247 CW.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Jose, California on August 8, 2008.

TAMARA LANGE

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Declaration of Tamara Lange in
Support of Opposition to Administrative
Motion for Expedited Briefing

BOARD OF SUPERVISORS CLOSED SESSION AGENDA

**County Government Center
10th Floor Conference Room
70 West Hedding Street
Monday, August 11, 2008**

2:00 p.m.

The Board will meet in open and public session to identify the real property Negotiators for Item No. 3 and its Designated Representatives for Item Nos. 5, 6 and 7.

1. Personnel (Government Code Section 54957):

It is the intention of the Board to meet in Closed Session to consider:

Employee Evaluations

Chief of Correction
Clerk of the Board
County Counsel
County Executive
Director, Child Support Services
Public Defender

2. Pending Litigation (Government Code Section 54956.9(a)):

It is the intention of the Board to meet in Closed Session to confer with Legal Counsel regarding three items of existing litigation.

A. Melanie and John Godby v. County of Santa Clara

Santa Clara County Superior Court Case No. 1-07-CV-096603

B. California Restaurant Association v. County of Santa Clara, et al.

U.S. District Court, Northern District of California, Case No. C08-03685 RS

C. County of Santa Clara, et al. v. Atlantic Richfield Company, et al.

California Supreme Court Case No. S163681

3. Real Property Negotiations (Government Code Section 54956.8):

It is the intention of the Board to meet in Closed Session to confer with its Real Property Negotiators concerning:

The price and terms of payment for the possible sale of real property located at 2500 Senter Road, San Jose (APN 497-41-098). The negotiator for the County is Patrick Love, Asset and Economic Development Director. The negotiator for Charities Housing is Chris Block, Executive Director.

EXHIBIT A

Closed Session Agenda
August 11, 2008
Page 2

4. Threat to Public Services or Facilities (Government Code Section 54957):
It is the intention of the Board to meet in Closed Session regarding the security of public buildings, essential public services, or the public's right of access to public services or public facilities.
5. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives:

Designated Representative's Name: Luke Leung

Local 20, IFPTE, Engineers and Scientists (ESC)
Local 21, IFPTE, Engineers and Architects (E&A)
Local 521, SEIU
Local 1587, AFSCME, Probation Peace Officers Union
Administrative Confidential Employees (ACE)
Building Trades Council (BTC)
Committee of Interns and Residents (CIR/SEIU)
Correctional Peace Officers Association (CPOA)
County Counsel Attorneys Association (CCAA)
County Employees Management Association (CEMA)
Deputy Sheriffs' Association (DSA)
District Attorneys Investigators Association (DAIA)
Government Attorneys Association (GAA)
Park Rangers Association
Registered Nurses Professional Association (RNPA)
Union of American Physicians and Dentists (UAPD)
Unrepresented Executive Management

For the following item, the Board will meet as the Governing Board of the In Home Supportive Services (IHSS) Public Authority.

6. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives concerning the following:

Designated Representative's Name: Luke Leung
Local 521, SEIU

For the following item, the Board will meet as the Board of Directors for the Santa Clara County Central Fire Protection District.

7. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives concerning the following:

Designated Representative's Name: Luke Leung
Local 1165, International Association of Fire Fighters (IAFF)

1 Trenton H. Norris (California State Bar No. 164781)
 2 Sarah Esmaili (California State Bar No. 206053)
 3 ARNOLD & PORTER LLP
 4 90 New Montgomery Street, Suite 600
 5 San Francisco, CA 94105
 6 Telephone: (415) 356-3000
 7 Facsimile: (415) 356-3099
 8 Email: trent.norris@aporter.com
 9 Email: sarah.esmaili@aporter.com

10 Peter L. Zimroth (*pro hac vice* admission pending)
 11 Kent A. Yalowitz (*pro hac vice* admission pending)
 12 Nancy G. Milburn (*pro hac vice* admission pending)
 13 ARNOLD & PORTER LLP
 14 399 Park Avenue
 15 New York, NY 10022
 16 Telephone: (212) 715-1000
 17 Facsimile: (212) 715-1399
 18 Email: peter.zimroth@aporter.com
 19 Email: kent.yalowitz@aporter.com
 20 Email: nancy.milburn@aporter.com

21 Attorneys for Plaintiff
 22 CALIFORNIA RESTAURANT ASSOCIATION

23
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

24 C-08-3247 CW

25 Case No. _____

26	CALIFORNIA RESTAURANT ASSOCIATION,	} STIPULATION AND ORDER 27 Plaintiff, } REGARDING PAGE LIMITS AND 28 v. } BRIEFING SCHEDULE REGARDING THE CITY AND COUNTY OF SAN } PLAINTIFF'S MOTION FOR FRANCISCO and THE SAN FRANCISCO } DECLARATORY RELIEF AND A DEPARTMENT OF PUBLIC HEALTH, } PRELIMINARY INJUNCTION, AND 29 Defendants. } REGARDING STAY OF 30 ENFORCEMENT
31	32		(Civil Local Rule 7.11)

33
EXHIBIT B

STIPULATION

WHEREAS, Plaintiff California Restaurant Association filed a Complaint against the City and County of San Francisco and the San Francisco Department of Public Health (collectively, “Defendants”) alleging that Ordinance 40-08 (“Ordinance”) violates the U.S. and California Constitutions;

WHEREAS, the Ordinance amends San Francisco Health Code sections 468-468.8 to require restaurants with twenty or more establishments in the State of California to make statements showing certain nutritional information on menu boards and menus in manner prescribed by the Ordinance;

WHEREAS, Plaintiff alleges that the Ordinance is preempted under federal and state law and that the Ordinance unconstitutionally compels speech by the restaurants subject to the Ordinance;

WHEREAS, Plaintiff has brought a Motion for Declaratory Relief and a Preliminary Injunction (“Motion”) in this action to enjoin the San Francisco Department of Public Health from enforcing the Ordinance:

WHEREAS, certain nutritional disclosure requirements begin to take effect under the Ordinance on August 23, 2008 ("Disclosure Requirements");

WHEREAS, a proposed amendment to the Ordinance is pending that would, among other things, postpone the operative date of these Disclosure Requirements to September 20, 2008;

WHEREAS, in light of the proposed amendment to the Ordinance, Defendant San Francisco Department of Public Health has stated that it will not enforce these Disclosure Requirements until September 20, 2008;

WHEREAS, the Parties have agreed that, subject to Court approval of this Stipulation, Plaintiff's Motion would be noticed at least 63 days before the hearing date, Defendants' opposition papers would be due no less than 35 days before the hearing date, and Plaintiff's reply to the opposition papers would be due no less than 14 days before the hearing date;

1 WHEREAS, Defendants have agreed to postpone the operative date of the Disclosure
2 Requirements until October 14, 2008;

3 WHEREAS, Civil Local Rule 7-2(b) provides for a twenty-five (25) page limit on any
4 motion and supporting memorandum of points and authorities filed in this action;

5 WHEREAS, Civil Local Rule 7-3(c) provides for a twenty-five (25) page limit on any
6 opposition to any motion filed in this action;

7 WHEREAS, given the complexity of the constitutional issues raised in the action and in the
8 Motion, Plaintiff and Defendants believe that it is appropriate, subject to Court approval, for the
9 Motion and supporting memorandum of points and authorities and the Opposition to the Motion to
10 exceed the twenty-five (25) page limit such that they are each no more than thirty-five (35) pages in
11 length; and

12 WHEREAS, Plaintiff and Defendants agree that this stipulation is without prejudice as to
13 any party's right to seek further or additional relief as to matters addressed herein;

14 IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff and Defendants,
15 subject to approval of the Court, that:

16 1. Plaintiff's Motion (including the supporting memorandum of points and authorities)
17 may exceed the twenty-five (25) page limit imposed by Civil Local Rule 7-2(b), but may not exceed
18 a total of thirty-five (35) pages, exclusive of the caption page, table of contents, table of authorities,
19 declarations, and exhibits.

20 2. Defendants' opposition to the Motion may exceed the twenty-five (25) page limit
21 imposed by Civil Local Rule 7-3(c), but may not exceed a total of thirty-five (35) pages, exclusive
22 of the caption page, table of contents, table of authorities, declarations, and exhibits.

23 3. Plaintiff's Motion shall be noticed for hearing on a date that is no less than 63 days
24 after the Motion is filed and served.

25 4. Defendants' opposition to the Motion shall be filed and served not less than 35 days
26 before the hearing date.

1 5. Plaintiff's reply to Defendants' Opposition to the Motion shall be filed and served
2 not less than 14 days before the hearing date.

3 6. The operative date of the Ordinance shall be stayed until October 14, 2008 without
4 prejudice as to Plaintiff's right to seek a further stay and Defendants' right to oppose any further
5 stay.

6 **SO STIPULATED:**

7 Dated: July __, 2008

ARNOLD & PORTER LLP

8
9 By: _____

10 Trenton H. Norris
11 Attorneys for Plaintiff
12 CALIFORNIA RESTAURANT ASSOCIATION

13 Dated: July __, 2008

14 DENNIS J. HERRERA
15 City Attorney
16 FRANCESCA GESSIONER
17 Deputy City Attorney

18 By: _____

19 Francesca Gessner
20 Tara Steeley
21 Attorneys for Defendants
22 CITY AND COUNTY OF SAN FRANCISCO
23 AND SAN FRANCISCO DEPARTMENT OF
24 PUBLIC HEALTH

1 PURSUANT TO THE STIPULATION, IT IS SO ORDERED:
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3 Dated: _____
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6 UNITED STATES DISTRICT COURT JUDGE
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Case 4:08-cv-03247-CW Document 40 Filed 08/07/2008 Page 1 of 4

1 Trenton H. Norris (California State Bar No. 164781)
 2 Sarah Esmaili (California State Bar No. 206053)
 3 ARNOLD & PORTER LLP
 4 90 New Montgomery Street, Suite 600
 5 San Francisco, CA 94105
 Telephone: (415) 356-3000
 Facsimile: (415) 356-3099
 Email: trent.norris@aporter.com
 Email: sarah.esmaili@aporter.com

6 Peter L. Zimroth (*pro hac vice* admission pending)
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 Nancy G. Milburn (*pro hac vice* admission pending)
 ARNOLD & PORTER LLP
 8 399 Park Avenue
 New York, NY 10022
 Telephone: (212) 715-1000
 Facsimile: (212) 715-1399
 Email: peter.zimroth@aporter.com
 Email: kent.yalowitz@aporter.com
 Email: nancy.milburn@aporter.com

12 Attorneys for Plaintiff
 CALIFORNIA RESTAURANT ASSOCIATION

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 CALIFORNIA RESTAURANT ASSOCIATION,	) Case No. 08-CV-03247 CW
17 Plaintiff,	) PLAINTIFF CALIFORNIA RESTAURANT ASSOCIATION'S STATEMENT OF NON-OPPosition TO DEFENDANTS' ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED
18 v.	) The Honorable Claudia Wilken
19 THE CITY AND COUNTY OF SAN FRANCISCO and THE SAN FRANCISCO OF DEPARTMENT OF PUBLIC HEALTH,)
21 Defendants.)
22 CALIFORNIA RESTAURANT ASSOCIATION,)
23 Plaintiff,	) Case No. 08-CV-03685 RS
24 v.)
26 THE COUNTY OF SANTA CLARA and THE SANTA CLARA COUNTY PUBLIC HEALTH DEPARTMENT,	) Reassignment to a United States District Court Judge pending
28 Defendants.)

EXHIBIT C

Case 4:08-cv-03247-CW Document 40 Filed 08/07/2008 Page 2 of 4

1 Plaintiff California Restaurant Association respectfully submits this statement of non-
 2 opposition in response to Defendants County of Santa Clara and the Santa Clara County Public
 3 Health Department's Motion To Consider Whether Cases Should Be Related. Although Plaintiff
 4 does not believe the cases are related, it does not oppose reassignment, and writes to inform the
 5 Court of its need for an expedited hearing date and briefing schedule in *California Restaurant*
 6 *Association v. The County of Santa Clara, et al.*, Case No. 08-CV-03685 RS (the "Santa Clara
 7 County case") on its Motion for Declaratory Relief and a Preliminary Injunction ("Preliminary
 8 Injunction Motion") for the reasons stated below.

9 The Complaint against Defendants that is currently pending in the *Santa Clara County* case
 10 arises out of an action that Plaintiff filed in the Santa Clara County Superior Court ("Superior
 11 Court"). On July 22, 2008, Plaintiff filed the Superior Court action seeking declaratory and
 12 injunctive relief to prevent enforcement of a newly promulgated ordinance, Santa Clara County
 13 Ordinance No. NS-300.793 (the "Ordinance"), which requires certain chain restaurants to display
 14 select parts of nutrition information (calories and in some cases transfat, carbohydrates and sodium)
 15 in a precisely described manner on restaurant menus. The Ordinance was passed on June 24, 2008,
 16 and goes into effect on September 1, 2008. On July 23, 2008, Plaintiff appeared in the Superior
 17 Court, along with counsel for Defendants. Plaintiff obtained on that date a hearing date of August
 18 15, 2008 from the Clerk of the Complex Litigation Division of that Court. Based on this August 15,
 19 2008 hearing date, Defendants were required to file their opposition papers to the Preliminary
 20 Injunction Motion by August 4, 2008, and Plaintiff was required to file its reply papers by August 8,
 21 2008. However, on August 1 – the last business day before their opposition brief was due –
 22 Defendants removed the action from the Superior Court. The removed case was assigned to
 23 Magistrate Judge Richard Seeborg in the Northern District of California, San Jose Division.
 24 Defendants have not filed an opposition to the Preliminary Injunction Motion before or since
 25 removal.

26 Defendants have refused to stay the September 1, 2008 effective date of the Ordinance.
 27 Consequently, on August 6, 2008, Plaintiff filed an Administrative Motion before Magistrate Judge

1 Seeborg, seeking an expedited hearing and briefing schedule so that its Preliminary Injunction
2 Motion could be heard and decided before the September 1 effective date of the Ordinance. A copy
3 of that Administrative Motion and the Proposed Order Granting that Administrative Motion are
4 attached as Exhibits 1 and 2, respectively. However, on August 7, 2008, Defendants filed a
5 Declination To Proceed before a Magistrate Judge and Request for Reassignment to a United States
6 District Judge. To Plaintiff's knowledge, the *Santa Clara County* case has not yet been reassigned
7 to a United States District Court Judge.

8 On August 6, 2008, Defendants filed their administrative motion seeking to relate the *Santa*
9 *Clara County* case, Case No. 08-CV-03685, to *California Restaurant Association v. The City and*
10 *County of San Francisco, et al.*, Case No. 08-CV-3247 CW. Local Civil Rule 3-12 provides:

11 An action is related to another when:

- 12 (1) The actions concern substantially the same parties, property,
13 transaction or event; and
14 (2) It appears likely that there will be an unduly burdensome
15 duplication of labor and expense or conflicting results if the cases are
conducted before different Judges.

16 Although the cases involve different defendants and different ordinances, Plaintiff agrees that there
17 are judicial economies in having the cases consolidated before a single judge and therefore do not
18 oppose reassignment under Paragraph E.4 of General Order No. 44. However, Plaintiff writes to
19 bring to this Court's attention its need for an expedited hearing and briefing schedule in the *Santa*
20 *Clara County* case (Case No. 08-CV-03685) in light of the September 1 effective date of the Santa
21 Clara Ordinance, and the *Santa Clara County* defendants' unwillingness to agree to a stay.

22 Given Defendants' (1) removal of this case on the eve of the due date of their opposition to
23 the Preliminary Injunction Motion, (2) refusal to agree to a stay of the hearing date and briefing
24 schedule proposed by Plaintiff in its Administrative Motion, and (3) declination of consent to have
25 the case heard before Magistrate Judge Seeborg, Defendants have placed this case in a posture
26 where Plaintiff is unable to have its Preliminary Injunction Motion scheduled for briefing and a
27 hearing on the expedited schedule it requires. In their Declination To Proceed Before a Magistrate
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1 Judge, Defendants state that Plaintiff's Motion for Declaratory Relief and a Preliminary Injunction
2 in *California Restaurant Association v. City and County of San Francisco* (Case No. 08-CV-03247
3 CW) is set for a hearing on September 4, 2008. That date was agreed upon by the parties in that
4 case because the City and County of San Francisco agreed to stay the effective date of its ordinance
5 until October 14, 2008. A September 4 hearing date for the Preliminary Injunction Motion in the
6 *Santa Clara County* case would mean that the motion would not be heard – let alone decided –until
7 after the Ordinance went into effect and the Plaintiffs' members were denied their constitutional
8 rights. Such a schedule not only would infringe on constitutional rights of the most serious nature,
9 it would also deny Plaintiff and its members their right of meaningful access to the Courts, after
10 Plaintiff has made every effort to obtain a prompt hearing date and expedited briefing schedule.

11 **CONCLUSION**

12 For the reasons stated herein, Plaintiff does not oppose Defendants' administrative motion.
13 If the *Santa Clara County* case is related to Case No. 08-CV-03247 CW, Plaintiff believes it is
14 appropriate for the Court to order an expedited briefing and hearing schedule on the Preliminary
15 Injunction Motion that is consistent with what Plaintiff has requested in the *Santa Clara County*
16 case.

17 Dated: August 7, 2008

ARNOLD & PORTER LLP

18
19 By: _____ /s/
20 Trenton H. Norris
21 Attorneys for Plaintiff
22 CALIFORNIA RESTAURANT
23 ASSOCIATION
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